

In the Matter of W. D. BYRON & SONS OF MARYLAND, INC. and INTERNATIONAL FUR & LEATHER WORKERS UNION OF THE UNITED STATES AND CANADA, CIO

Case No. 5-R-1466.—Decided February 29, 1944

Lane, Bushong & Byron, of Hagerstown, Md., by *Messrs. David W. Byron* and *E. Stuart Bushong*, for the Company.

Mr. Victor Hirshfield, of Hagerstown, Md., and *Mr. Frank J. Bender*, of Baltimore, Md., for the Union.

Mrs. Augusta Spaulding, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Fur & Leather Workers Union of the United States and Canada, CIO,¹ herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of W. D. Byron & Sons of Maryland, Inc., Williamsport, Maryland, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert A. Levett, Trial Examiner. Said hearing was held at Hagerstown, Maryland, on January 13, 1944. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

W. D. Byron & Sons of Maryland, Inc., is engaged in the tanning of hides at Williamsport, Maryland, and in the manufacture of inner

¹ The petition and other formal papers were amended at the hearing to show the correct name of the petitioner.

soles and heels at Hanover, Pennsylvania. The Company's tannery at Williamsport is the only plant involved in this proceeding.

During the year 1943, the raw materials used by the Company at its tannery, consisting chiefly of hides, were valued in excess of \$1,500,000, of which more than 75 percent was shipped to Williamsport from points outside Maryland. During the same period, the products finished by the Company at its tannery, consisting chiefly of leather, were valued in excess of \$2,000,000, of which more than 75 percent was shipped to points outside Maryland.

The Company admits that it is engaged in commerce, within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

International Fur & Leather Workers Union of the United States and Canada is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On September 13, 1943, the Union asked the Company for a bargaining conference, alleging that it represented a majority of the Company's employees at the tannery. At a conference held on December 31, 1943, the Company took the position that it would not recognize the Union until the Union had been certified by the Board.

A statement prepared by the Field Examiner and introduced into evidence at the hearing indicates that the Union represents a substantial number of employees in the unit herein found appropriate.²

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

² The Union submitted 97 application cards, of which 1 was undated and the remaining dated between September and December 1943, of which 92 cards bore the names of employees listed on the Company's pay roll of December 30, 1943. There are approximately 195 employees in the appropriate bargaining unit.

On February 24, 1943, pursuant to a petition filed by the Union in Case No. R-4810, a prior representation proceeding involving employees of the Company, the Board issued a Decision and Direction of Election, directing that an election be held among the Company's employees at the tannery. *Matter of W. D. Byron & Sons of Maryland, Inc.*, 47 N. L. R. B. 994. The 110 cards submitted by the Union for our preliminary investigation had not been checked against the Company's pay roll, because the Company refused to submit its pay roll to the Field Examiner in charge. The election was held. Of 186 valid votes counted, 54 were cast for, and 132 against, the Union. On March 24, 1943, the Board dismissed the petition.

The Company contends that the present showing of representation among the employees made by the Union, as noted above, is not sufficient to justify the Board in directing another election at this time. We do not agree. As indicated by its recent cards, the Union has extended its membership among the Company's employees. We are of the opinion that, in the furtherance of the policies of the Act, an election should be directed at this time. *Matter of Pomona Terra Cotta Company*, 50 N. L. R. B. 87.

IV. THE APPROPRIATE UNIT

The Company and the Union agree, and we find, that production and maintenance employees at the Company's tannery, including firemen, oilers and electrical helpers, and watchmen³ should be included in the bargaining unit and that salesmen,⁴ office clerks, managers, and foremen should be excluded from the bargaining unit. The parties disagree as to pensioners. The Union would exclude them, and the Company would include them. The parties further disagree as to the supervisory status of 10 named employees. The Company lists these employees as regular production and maintenance employees, and contends that they should be included in the bargaining unit. The Union contends that they are supervisory employees and should be excluded therefrom.

A. Pensioners

In July 1943 the Company adopted and put into practice a policy of laying off and pensioning employees who had been faithful in the Company's service and who, due to age or infirmities, were no longer able to carry on their regular work at the tannery. Length of service with the Company, the physical condition of the employee, his eligibility for Social Security, his needs, and the needs of his family are considerations in fixing the amount of each pension. The Company retains the right to recall these pensioners for light work at the tannery when any suitable work may be available for them. The Company does not expect the pensioned employee to seek other work outside, but no express prohibition is set against such work.

In the execution of its pension policy, the Company laid off and pensioned seven men in July 1943 and one man in January 1944.⁵ The names of these pensioners have been retained on the Company's regular pay roll, where they are listed as employees in the respective departments from which they were laid off, although none of the pensioners is expected to return to the work which he was adjudged physically unable to do at the time of his lay-off. The Company has a considerable annual turn-over in employment. None of the seven men laid off and pensioned in July 1943 has since been recalled for work, as no light work has been available at the tannery during this

³ The Company's watchmen are neither armed nor militarized.

⁴ Salesmen were not expressly excluded from the unit found appropriate for the Company's employees in the prior representation proceeding, noted in footnote 2, above. Otherwise, the agreement between the Company and the Union with respect to employees to be included in the unit, and excluded therefrom, corresponds with the Board's finding of the appropriate unit for the Company's employees in the prior proceeding.

⁵ In July 1943 the Company laid off Richard T. Houpt, aged 65; J. R. Banzhoff, aged 73; Simon B. Byers, aged 63; George C. Bowser, aged 70; Charles E. Grimes, aged 70; Franklin B. Bryan, aged 63; and George W. Sloyer, aged 63.

In January 1944 D. E. Hawbecker was laid off at the age of 65.

6-month period. The Company does not know when suitable work will be available. Since it appears that the pensioners have little expectation of active employment at the tannery, we shall exclude them from the bargaining unit of regular production and maintenance workers.

B. *Supervisory employees*

The Company's tannery operations are scattered over approximately 3 acres of ground, upon which there is a large main building and 6 smaller ones, varying from 1 to 4 stories. The buildings are for the most part connected by passageways. In its 13 departments of the tannery, the Company employs approximately 200 workers. Some few employees are paid on a piece-work basis, but the great majority of the production and maintenance employees are paid on an hourly basis, for an 8-hour day and a 40-hour week.

The superintendent of the tannery is in charge of all its operations and has the sole power to hire and to discharge employees therein. The assistant superintendent and the 13 foremen in direct charge of the several departments of the tannery have power to recommend the hire and discharge of employees working under them. As noted above, the Company and the Union agree that managers, including the superintendent, the assistant superintendent, and the foremen should be excluded from the bargaining unit. The Union would also exclude from the bargaining unit James L. Poffenberger, Jacob Turner, Benjamin F. Taylor, James M. Sword, Jr., Samuel L. McCauley, Samuel W. Shank, George S. Lizer, Richard W. Mellott, Russell M. Turner, and John G. Henry, on the ground that they also are supervisory employees. The Company disagrees.

James L. Poffenberger: Poffenberger is employed in the grain-tunnel department. The Company classifies him as a handy man, able to run a setting machine, tack leather, and oil off leather. His principal job is the operation of the setting machine, which removes wrinkles from leather. Another employee in the same department does similar work. The highest wage rate paid in the department is 67½ cents per hour; the lowest rate is 52½ cents per hour. Poffenberger and 16 of the 23 men in the department receive the highest rate paid in the department. The foreman of the grain-tunnel department has 1 week's vacation each year. In addition to his regular vacation, the foreman is absent approximately 2 days in each 3-month period. In the absence of the foreman, Poffenberger relays to the men in the department orders which are given to him by the assistant superintendent. During the foreman's absence, Poffenberger performs his regular work. He does not check upon the production of other men in the department.

Jacob Turner: Turner is employed in the beam-house department, where he is classified as a reeling and floor man. His principal work

is in reeling hides and placing lime in the vats. Turner receives 92½ cents per hour, which is the lowest rate paid to any man in his department. The highest rate in the department is 97½ cents per hour. The foreman of the department, in addition to his regular yearly vacation of 1 week, is absent upon the average of 1 day in 3 months. During the absence of the foreman, Turner weighs out material for the puring wheel, a function usually performed by the foreman. Weighing out material normally consumes about 15 minutes per day. There are 14 employees in the department.

Benjamin F. Taylor: Taylor is employed in the liquor-yard department. He is the operator of an electric pump which propels the tanning liquor from the leach house through pipes to the tanning yard, where the liquor is used. Taylor receives 72½ cents per hour, which is the uniform rate for all 12 employees in this department. Employees in this department have routine duties. The foreman of the department, in addition to his regular yearly vacation of 1 week, is absent from work about 1 day each month. During the foreman's absence, Taylor acts as leadman and passes on instructions from the office with respect to the materials to be used. When the foreman is absent, the assistant superintendent visits the department at least 6 times during the work day. Taylor performs his regular work as pump operator, whether or not the foreman is present.

James M. Sword, Jr.: Sword is employed in the chrome-room department and classed as a split-machine feeder. He receives 80 cents per hour, which is the highest rate paid in his department. The lowest rate is 52½ cents per hour. There are four or five employees in this department. The assistant superintendent is the foreman of the department. Sword's father is the operator of the machine of which Sword is feeder, and has the more highly skilled job. Orders for work in this department are given in advance, and the men are accustomed to carry on their work without continual supervision. Sword has no additional duties during the absence of the foreman, which for the past year, in addition to his regular yearly vacation of 1 week, has amounted to 2 days.

Samuel L. McCauley: McCauley is employed in the wet and dry-room department and classed as a rough-leather sorter. He receives 82½ cents per hour, which is the highest rate in the department. The lowest rate is 52½ cents. There are 27 employees in the department, 4 of whom receive over 80 cents per hour. McCauley's work consists of turning and classifying leather. A marker records the grade of the leather with a hand punch. In the absence of the foreman, which occurs about 1 day per month, in addition to the regular yearly vacation of 1 week, McCauley relays the superintendent's instructions to the employees concerning the colors for dyeing the leather. The as-

sistant superintendent visits this department daily when the foreman is present, and oftener if the foreman is absent.

Samuel W. Shank: Shank is employed in the case-finishing department. He is a paint mixer. He spends his time mixing paint and matching colors. He receives 70 cents per hour. Six other employees in the department receive 70.8 cents per hour. The lowest rate in the department is 62½ cents per hour. There are 11 employees in this department. In the absence of its foreman, the foreman of another department takes charge of the work.

George S. Lizer: Lizer is employed in the shipping department as a packer and shipper. There are 11 employees in the department. Lizer receives 80 cents per hour. The highest rate paid in the department is 95 cents per hour, and the lowest rate is 55 cents per hour. Two employees in the department receive higher rates than Lizer. In the absence of the foreman, Lizer relays orders from the office to other employees in the department, and carries on his regular work.

Richard W. Mellott: Mellott is employed in the hide-house department and is classed as a general laborer. There are 11 employees in the department. Mellott receives 57½ cents per hour, which is the highest rate paid in the department. The lowest rate is 52½ cents per hour. Mellott unloads hides, extracts, and other materials, and for about 2 hours per day drives a truck hauling ashes to the dump. Exclusive of his yearly vacation of 1 week, the foreman is absent from the department about 1 day in every 3 months. In the absence of the foreman, the assistant superintendent takes direct charge of the department.

Russell M. Turner: Turner is employed in the carpenter and machine shop. He is a mechanic. There are 10 employees in the shop. Turner receives 65 cents per hour, which is the highest rate paid in the department; the lowest is 60 cents. Turner is the son of R. P. Turner, the foreman of the department.

John G. Henry: Henry is employed in the buffing department and operates a buffer for smoothing the leather. He receives 72½ cents per hour, the highest rate paid to any of the five employees in the department. The lowest rate paid in the department is 60 cents.

The assistant superintendent of the plant testified that none of the above-named employees was considered a supervisory employee by the Company and that none of them had any authority to discipline employees or make recommendations concerning their status. The Union offered no testimony in support of its claim that the named employees had supervisory status, within our usual definition of that term. In the former representation proceeding involving the employees of the Company noted above, the Union claimed that McCauley, Shank, Lizer, Mellott, and J. Turner were supervisory employees, and the

Board in its decision ruled that the evidence was insufficient to establish that any of them was a supervisory employee and, accordingly, the Board included all of them in the appropriate bargaining unit. The present duties of these 5 employees are the same as those which they performed at the time of the prior hearing. Since upon the present record it does not appear that any of the 10 named employees claimed by the Union to be supervisory possesses any supervisory powers within our usual definition of the term, we shall include the above-named employees within the bargaining unit. We shall exclude all supervisory employees, within our usual definition of that term.

We find that all production and maintenance employees⁶ at the Company's Williamsport tannery, including firemen, oilers and electrical helpers, and watchmen, but excluding pensioners, salesmen, office clerks, managers, foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with W. D. Byron & Sons of Maryland, Inc., Williamsport, Maryland, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fifth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regula-

⁶ Since we have not found that James L. Poffenberger, Jacob Turner, Benjamin F. Taylor, James M. Sword, Jr., Samuel L. McCauley, Samuel W. Shank, George S. Lizer, Richard W. Mellott, Russell M. Turner, and John G. Henry are supervisory employees, they are included within the unit as production and maintenance employees.

tions, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by International Fur & Leather Workers Union of the United States and Canada, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.